

MEMORANDUM OF AGREEMENT

BETWEEN

GATEWAY NATIONAL RECREATION AREA, NATIONAL PARK SERVICE AND NEW YORK STATE HISTORIC PRESERVATION OFFICER, FOR SHORE ACCESS AND RESILIENCY AT FORT TILDEN

WHEREAS, Gateway National Recreation Area (the park) proposes to improve access, safety, and resiliency at the shoreline of Fort Tilden, Queens, New York, in response to Hurricane Sandy damage; and

WHEREAS, the Fort Tilden Historic District was listed on the National Register of Historic Places in 1984, and the boundaries of the district were expanded by a Determination of Eligibility from the Keeper of the National Register in 2009; and

WHEREAS, in October 2012, Hurricane Sandy caused extensive damage to the park, particularly Shore Road and Buildings 15-18, and uncovered a decaying bulkhead and wooden groins, the Telephone Pit Building, and a gun emplacement associated with Battery Kessler, as well as causing erosion around the Battery; and

WHEREAS, the National Park Service (NPS) proposes to replace the destroyed and subsequently removed western half of Shore Road with a shell/clay-based road, partially demolish the bulkhead, and completely demolish Buildings 15-18, the Telephone Pit Building, and the wooden groins; and

WHEREAS, the NPS has determined that the Area of Potential Effect (APE) includes the entire Fort Tilden historic district; and

WHEREAS, Shore Road, Buildings 15-18, the bulkhead and groin field, the Telephone Pit Building, and Battery Kessler are all contributing elements to the Fort Tilden Historic District; and

WHEREAS, the NPS has consulted with the New York State Historic Preservation Officer (NYSHPO), in accordance with 36 C.F.R. part 800, the regulations implementing Section 106 of the National Historic Preservation Act (16 U.S.C. § 470f), and the NYSHPO agrees that the undertaking is an adverse effect; and

WHEREAS, the NPS has informed the ACHP of the adverse effect; and

WHEREAS, the NPS has invited the Delaware Nation, Delaware Tribe, and Stockbridge-Munsee Band of Mohican Indians to be concurring parties to this agreement, and none chose to do so; and

WHEREAS, the park has provided the public an opportunity to comment on this undertaking by including a copy of this agreement in the environmental assessment for the project and posting it prior to signature on the NPS Planning, Environment, and Public Comment (PEPC) website; and

NOW, THEREFORE, the NPS and NYSHPO agree that the project shall be implemented in accordance with the following stipulations:

STIPULATIONS

A. Mitigation of Adverse Effects

1. 3D scanning and recordation of Batteries Kessler and 220.
2. Digital photos of Batteries Kessler and 220 and the structures at the Nike Site to fill gaps in the New York Cultural Resource Information System (CRIS).
3. Development of text and images on the World War II history of Fort Tilden for the GATE mobile application (app), including the role of the Telephone Pit Building.
4. Archeological monitoring of demolition activities at Buildings 15-18 and the Telephone Pit Building.
5. Documentation of bulkhead and groins, including:
 - a. High-resolution digital TIFF images of the bulkhead and groins (at low tide) during excavation and prior to their removal, with measuring sticks included in the photos for scale
 - b. Description of means and methods of the removal of the bulkhead and groins

B. Inadvertent Resource Discoveries

If during construction or demolition activities previously unknown archeological resources are discovered, all work in the immediate vicinity of the discovery will be halted and the procedures of 36 CFR Part 800.13(c) followed. In the unlikely event that Native American human remains, funerary objects, sacred objects and objects of cultural patrimony are discovered, all work in the immediate vicinity of the discovery will be halted and the procedures of 43 CFR § 10.3 will be carried out including taking immediate steps to protect the discoveries in situ, notification of the three affiliated tribes, tribal consultation, and the development and execution of a Plan of Action.

C. Dispute Resolution

Disputes regarding the completion of the terms of this Agreement shall be resolved by the signatories. If the signatories cannot agree regarding a dispute, the NPS or SHPO may request the participation of ACHP to assist in resolving the dispute. Any recommendation or comment provided by the ACHP will be understood to pertain only to the subject of the dispute. The NPS's responsibility to carry out all actions under this Agreement that are not the subjects of dispute will remain unchanged.

At any time during implementation of the measures stipulated in this Agreement, should an objection to any such measure be raised by a member of the public, the NPS shall take the objection into account and consult as needed with the SHPO.

D. Amendment of Agreement

The Agreement may be modified by amendment at any time by mutual concurrence of all parties. Amendment of the Agreement as necessary shall be accomplished in the same manner as the original agreement. Amendments will be in writing and approved by the original signatories or their designated official.

E. Termination of Agreement

Either party to this Agreement may terminate it by providing thirty (30) calendar days notice to the other party, provided that the parties will consult during the period prior to termination to seek agreements on amendments or other actions that would avoid termination. In the event of termination by the SHPO, the NPS will request the comments of the ACHP, in accordance with 36 CFR Part 800.7(a).

F. Anti-Deficiency Act

All actions taken by the park in accordance with this MOA are subject to the availability of funds, and

nothing in this MOA shall be interpreted as constituting a violation of the Anti-Deficiency Act.

G. Term of Agreement

This Agreement shall become effective after the date of the last signatory. The Agreement shall be null and void if its terms are not carried out within five (5) years from the date of its approval by the Park and SHPO, unless the signatories agree in writing to an extension for carrying out its terms. Otherwise, this Agreement shall become null and void when the project is complete, and all of the above stipulations are fulfilled. The Agreement and any amendments shall be binding upon the parties, their successors, and assigns.

Execution of this Agreement by the NPS and SHPO, and implementation of its terms, evidences that the NPS has taken into the account the effects of the project on historic properties and afforded the ACHP the opportunity to comment.

AUTHORIZING SIGNATURES

National Park Service

By:



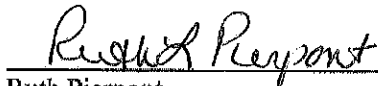
Jennifer T. Nersesian
Superintendent, Gateway National Recreation Area

Date:

4.6.16

New York State Historic Preservation Office

By:



Ruth Pierpont
Deputy Commissioner/Deputy SHPO

Date:

4/7/16